

CHOOSING AN ENTITY

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WHO ARE YOU?

WHAT DO YOU WANT TO DO?

Here are some ISSUES TO CONSIDER by completing the following sentences:

- I want to go into business with...
- I'd like to seek financing from....
- The roles I would like to have on the farm during the coming years are...
- This is how I see my life (as well as that of my partner and other family members) – on and off the farm – in 5, 10, 15, 20 years...
- I would like my farm legacy to be...

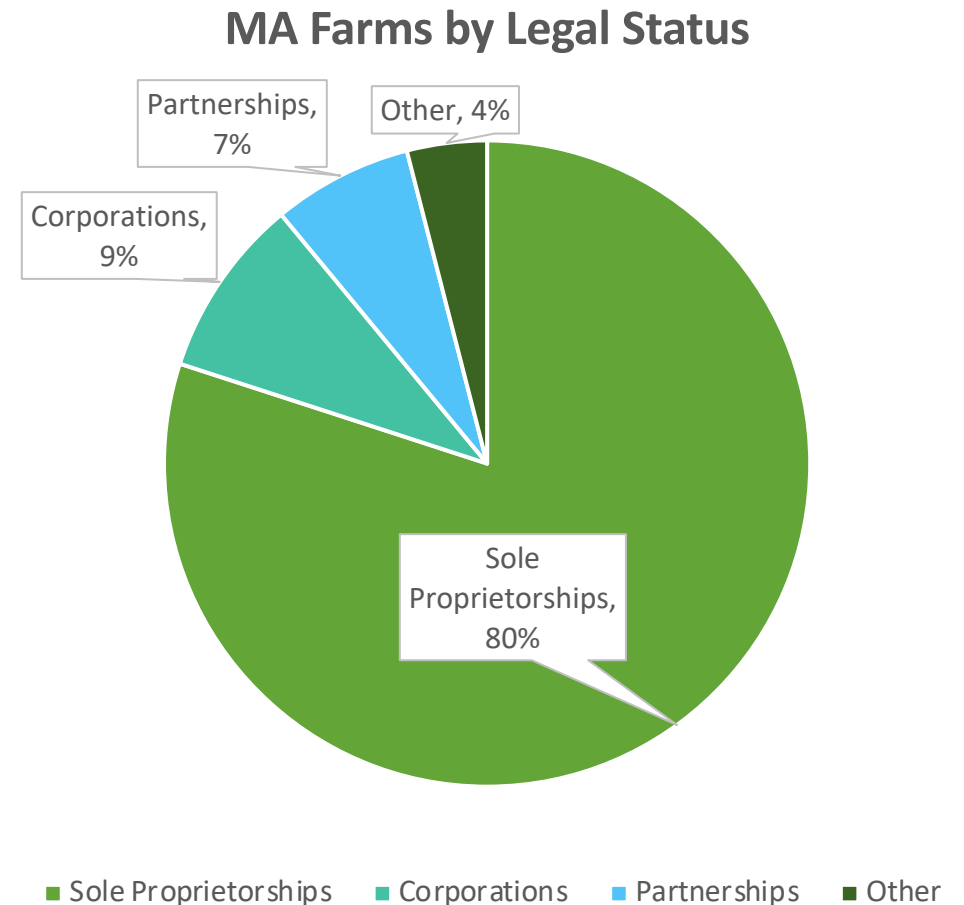
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Business Options

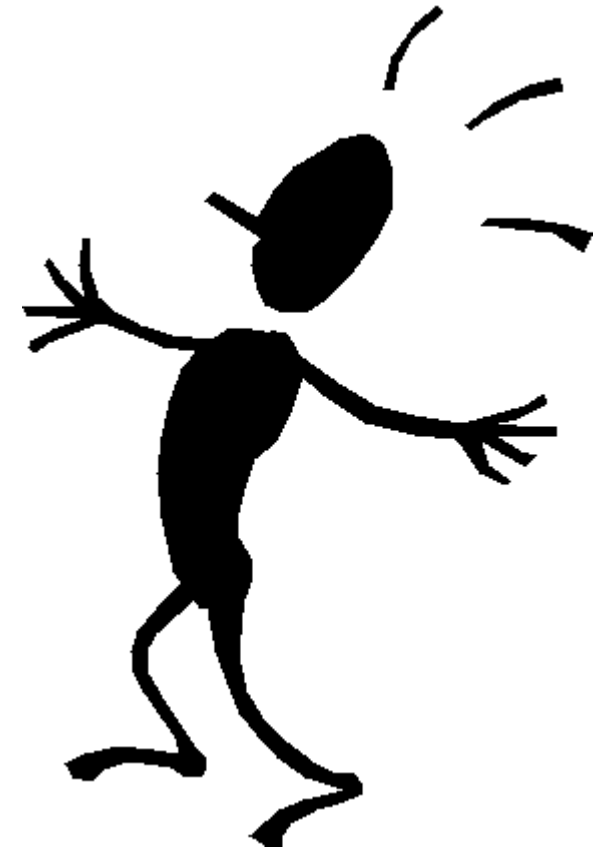
Different business types:

- Sole Proprietorship
- S Corporation
- C Corporation
- B Corporation
- Limited Liability Company (LLC)
- Partnership (General or Limited)
- Limited Liability Partnership (LLP)
- Non-profit Corporation
- Cooperative



Sole Proprietorships

- A sole proprietorship is a person engaged in business for themselves.
- It is an unincorporated business owned and run by one individual with no distinction between the business and the owner.
- The owner is entitled to all profits and responsible for all liabilities.
- Does not require legal filings, except on the municipal level. If you use a business name other than your own, you must file a Doing Business As (DBA) certificate with the local municipality.



Corporations – S Corps. and C Corps.

- A corporation is an independent legal entity owned by shareholders.
- A “C corporation” is separately taxed on its taxable income.
- An “S Corporation” passes through its income, losses, etc. to its stockholders, who report their pro rata shares of the S corporation’s tax items on their personal tax returns and pay any resulting tax.
- Stockholders of a corporations enjoy limited liability and, with certain exceptions, are not liable for corporate obligations exceeding their investment.



Corporations – B Corps.

- Benefit corporations, or B-corporations, pursue general or specific public benefits AND can distribute profits to shareholders.
- Unlike S and C-corporations, B-corporations are not required to focus solely on maximizing profits.
- The new kid on the block. Corporations were able to elect benefit corporation status in December 2012.
- Additional filings and fees required.



Partnerships (General or Limited) and Limited Liability Partnerships (LLPs)

- A **General Partnership** is an association of two or more persons who combine their resources – money, labor, skills, and/or property – to conduct business for profit, expecting to share both profits and losses.
- In a **Limited Partnership**, the general partners control business management and remain liable for the business obligations. The limited partners can reap the benefits of their investment and enjoy a limitation on liability, BUT cannot participate in the management or operation of the business.
- A Limited Liability Partnership (LLP) limits the personal liabilities of the business' partners but requires legal filings and fees.



Limited Liability Company – LLC

- A Limited Liability Company (LLC) is a hybrid that provides the limited liability features of a corporation and the flexibility of a partnership.
- Relatively easy to form and manage. Owners are members, and the Operating Agreement may establish one or more managers.
- Can have a single member/manager.
- May elect pass-through or double taxation.
- Provides flexibility regarding raising capital and transferring interests in the LLC.



Non-Profit Corporations

- Status as a non-profit corporation provides certain benefits such as tax exemption and the ability to receive tax-deductible charitable donations.
- BUT, to qualify as a non-profit, the farm's primary purpose must be educational, cultural, or charitable.
- The non-profit must be governed by individuals who do not have a financial stake in the business.
- Upon dissolution of the non-profit, its assets must be used in furtherance of its educational or charitable purposes.
- Must submit annual filings and petition the I.R.S. to obtain 501(c)(3) status.



































Cooperatives

- Cooperatives must further members' goals and meet their needs.
- Primary operational characteristics:
 - member ownership;
 - member control; and
 - proportional distribution of surplus based on a member's use of the enterprise.
- Types of co-operatives:
 - producer cooperative - where the co-operative markets and distributes the members' produce;
 - purchasing cooperative – where members purchase supplies or equipment together; and
 - worker co-operative – where employees own and govern the business together.
- Need seven or more members for an agricultural co-operative and need to follow the enabling statute if the organization calls itself a “co-operative.”



The Entity Matrix for Farm Businesses

(this is a job for you and your accountant)

Things to Consider	C Corporation	S Corporation	Partnership	LLC	Sole Proprietor
Structure					
Taxation					
Personal Liability			 		
Formation					
Ease of Exit					
Outside Investment			 		

Is a Separate Entity Worth It?

- Helps shield personal assets from business liabilities.
- Facilitates raising capital.
- Facilitates bringing on partners.
- Rents as business expense increase personal equity.
- Facilitates transfer of business assets for succession and estate planning purposes.

Advisors you may need:

- Accountant
- Attorney(s)
- Financial planner
- Insurance agent
- Land use planner
- Conservation/land trust
- Lender
- Mediator / facilitator